

ENERGY SALES CONTRACT
BETWEEN
CITIES AGGREGATION POWER PROJECT
AND
CITY OF FRISCO, TEXAS

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AND
CITY OF FRISCO, TEXAS**

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**ENERGY SALES CONTRACT
BETWEEN
CITIES AGGREGATION POWER PROJECT
AND
CITY OF FRISCO, TEXAS**

This Energy Sales Contract ("**Contract**") is executed on the date set opposite each signature below, effective, however, on December ___, 2008 ("**Effective Date**"), by and between the Cities Aggregation Power Project, Inc. ("**CAPP**"), a political subdivision corporation incorporated in the State of Texas, and the City of Frisco ("**Member**"). CAPP and Member are collectively referred to herein as the "**Parties**", and individually as a "**Party**".

RECITALS:

Capitalized terms used herein not otherwise defined shall have the meanings set forth in Article 1 hereof.

Member is a political subdivision of the State of Texas.

Member is a member of CAPP.

As the result of adoption of Senate Bill 7, enacted as Chapter 405, Acts of the 76th Legislature, Regular Session, 1999, municipalities now have the opportunity to competitively acquire electricity on more advantageous terms. This opportunity was the impetus for the creation of CAPP. CAPP was created to assist Member and the Participating Members in obtaining electricity used in such Members' own buildings and facilities by aggregating each Participating Member's electric load, and negotiating the best electric price based on the aggregated load.

Recognizing that all retail sales in the Texas deregulated electric market have been based on the price of natural gas on the Nymex Futures Market, Member desires to diversify the sources of its electric supplies in order to mitigate potential price volatility associated with a single fuel source supply of electric energy.

Member has a need for reliable electric energy at favorable and stable rates to fulfill its proprietary needs and governmental responsibilities in said buildings and facilities.

Member desires to increase its bargaining power in the deregulated market for Energy by relying upon and combining with other participating CAPP member cities ("**Participating Members**") to negotiate for future sources of electricity. The Participating Members are listed on Exhibit "A" attached hereto and incorporated by this reference herein for all purposes.

Member has determined to utilize the CAPP aggregation method of electric energy procurement for meeting the electric energy needs of governmental facilities that are located within its deregulated jurisdictional boundaries, as provided in this Contract.

CAPP has identified a source of Energy from selected units in the Big Brown generating station in Freestone County, Texas ("**Big Brown Facility**"), Martin Lake generating station located in Rusk County, Texas ("**Martin Lake Facility**"), and Oak Grove generating station located in Robertson County, Texas ("**Oak Grove Facility**") that are owned, respectively, by Big Brown Power Company, LLC, Luminant Generation Company LLC and Oak Grove Management Company, LLC (collectively, the "**Facility Owners**"), and that CAPP believes will assist Member in (i) mitigating potential price volatility of Energy, and (ii) accessing a wholesale power supply to meet the base load requirements of Member and Participating Members for twenty-four (24) years, commencing on January 1, 2009 at 12:00:00 a.m. CPT ("**Service Commencement Date**") and ending at one minute before 12:01 a.m. on January 1, 2033 unless the agreement for the procurement of such Energy is terminated sooner as therein provided ("**Term**"). The Big Brown Facility, Martin Lake Facility, and Oak Grove Facility are collectively called the "**Facilities**".

CAPP has entered into a Power Purchase Agreement with the Facility Owners in substantially the form attached hereto as Exhibit "B" and incorporated by this reference herein for all purposes ("**PPA**"), pursuant to which PPA, CAPP will contract to obtain 150 megawatts of Contract Capacity ("**Contract Capacity**") in the Facilities and access to wholesale power supplies to meet base load Energy needs of Member and Participating Members throughout the Term of the PPA.

Certain obligations of the Facility Owners under the PPA have been partially guaranteed by Texas Competitive Electric Holdings Company, LLC ("TCEH") through execution of a Guaranty substantially in the form attached to the PPA, and TCEH and its subsidiaries have guaranteed the original leveraged buyout ("LBO") documents and the PPA is a secured obligation under such LBO documents and as such is subject to the guaranty provided therein.

Member desires to acquire its Member Contract Energy Allocation in the Project from CAPP ("**Member Capacity**").

All Participating Members, including Member, have collectively contracted for and reserved the full Contract Capacity in the Facilities from CAPP. The PPA provides the terms for CAPP's purchase of all Contract Capacity from the Facility Owners for the benefit and on behalf of Member and Participating Members.

As a result of negotiations with the Facility Owners it has been determined that substantial savings in energy costs based upon today's energy market and current forecasts of future market prices can be realized by purchasing capacity rights in the Facilities from the Facility Owners as provided in the PPA on or before the Service Commencement Date.

CAPP has determined that it is in the best interests of Member and the Participating Members to prepay Facility Owners for Contract Capacity in the Facilities ("**Capacity Prepayment**") out of the proceeds of Bonds issued for such purpose by CAPP. Member and each of the other Participating Members in their respective Participant Contracts, agree to pay Member's Energy Allocation Percentage of the costs incurred by CAPP to issue the Bonds, pay the Capacity Prepayment to the Facility Owners, pay interest costs, establish a reserve, and pay all other costs, fees and charges that CAPP incurs under the Bonds directly to the Trustee, as hereinafter defined, until the Bonds are paid in full according to the payment schedule set forth in the Bonds. The Bonds shall be secured by the collateral assignment of this Contract and all Participant Contracts, as provided in this Contract, including all rights of collection thereon, to the Trustee. A copy of the payment schedule is attached hereto as Exhibit "C" and incorporated by this reference herein for all purposes.

Member acknowledges that CAPP shall additionally provide to Member at Member's expense, through Designated Agent(s), all services required and necessary to deliver the Energy from the Facility Owners Delivery Point to Member's Delivery Points, including all costs of transmission, distribution, and including all necessary tariffs, and fees as provided herein.

Member agrees to the terms of this Contract, and consents to the terms of the PPA. In reliance thereon, and in reliance upon the acceptance and agreement of all other Participating Members, CAPP (i) has entered or shall enter the PPA for the benefit of Member and Participating Members, (ii) shall cause the Bonds to be issued, and (iii) shall cause the Capacity Prepayment to be paid to the Facility Owners as provided in the PPA.

Accordingly, CAPP and Member have determined that it is in their mutual best interests to enter into this Contract as the means of providing Member with the Member Contract Energy Allocation for its base load needs during the Delivery Period described in Section 3.2, below. Other Participating Members have respectively entered or have committed to enter into contracts with CAPP that, when aggregated with this Contract, collectively account for all Contract Energy associated with the Contract Capacity in the Facilities during the Delivery Period that has or will be acquired by CAPP for the benefit of all Participating Members under the PPA.

The Public Property Finance Act, Subchapter A, Chapter 271, Local Government Code, as amended (the "**Act**"), authorizes Member to execute, perform and make payments under contracts with any person for the use, acquisition or purchase of personal property as described in the Act, including the electricity provided for in this Contract.

The Act permits the governing body of Member to execute contracts in any form deemed appropriate by said governing body in connection with the use, acquisition or purchase of personal property.

Member desires to acquire electricity property pursuant to this Contract as described herein from CAPP, and such personal property is deemed by the governing body of Member to be necessary, useful, and/or appropriate for the purposes of Member as contemplated by Section 304.001, Government Code, as amended.

In consideration of the mutual undertakings contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the Parties agree as follows:

ARTICLE 1 DEFINITIONS AND PRINCIPLES OF INTERPRETATION

1.1 Definitions. The following capitalized terms shall have the following meanings assigned to them under this Contract unless the context shall clearly indicate otherwise:

“Aggregated Expenses” shall mean the sum of charges to CAPP that are payable under the PPA to the Facility Owners and under a Wrap Contract for: (a) adjustments to the Capacity Prepayment under Section 4.2(b) of the PPA, (b) sums charged to CAPP under Section 3.3 of the PPA, (c) the amount of Disputed Charges that are payable by CAPP under Section 8.3 of the PPA or as a result of an Audit under Section 8.4 of the PPA, (d) sums payable by CAPP under Article 10 of the PPA, (e) sums, if any, required for the indemnity of the Facility Owners under Section 13.1 of the PPA, (f) Governmental Charges payable by CAPP pursuant to Section 20.1 of the PPA, (g) New Governmental Charges payable by CAPP pursuant to Section 20.2 of the PPA, (h) the cost of environmental improvements that are required to be paid by CAPP under the PPA, (i) any unforeseen non-recurring expenses approved by CAPP, and (j) the amount of any Seller Termination Payment due by CAPP to the Facility Owners pursuant to Article 12 of the PPA. The amount of Aggregated Expenses shall be reduced by (i) credits to the Capacity Prepayment under Section 4.2(a) of the PPA, (ii) credits under Section 3.4 of the PPA on account of the failure of the Facility Owners to deliver the Products to CAPP, and (iii) the amount of Disputed Charges that are payable by the Facility Owners to CAPP under Section 8.3 of the PPA or as a result of an Audit under Section 8.4 of the PPA.

“Alternate Energy” has the meaning set forth in the PPA.

"Appropriate", "Appropriated", and/or "Appropriation" means, with respect to any Energy Payment that Member is obligated to make under this Contract during a Fiscal Year, the adoption by the governing body of Member of a budget for such Fiscal Year that includes such payment.

"Available Funds" means, when used to describe funds of Member, those funds of the Member which have been lawfully Appropriated, within the sole and

uncontestable discretion of the Member, from current revenues and which may be expended, during the Fiscal Year for which Appropriated, for the purpose expressed in such Appropriation.

“Bankrupt” means a Party that: (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced and regardless of whether the bankruptcy or insolvency is voluntary or involuntary), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

“Base Year” means an annual period determined by CAPP as of the Effective Date to be representative of the typical total current Energy requirements of all Participating Members.

“Big Brown Facility” means Unit 1 and Unit 2 of the Big Brown generating station located in Freestone County, Texas, with an appropriate cumulative Net Rated Capacity of 1203 megawatts as of the Effective Date.

“Bonds” shall mean all contract revenue bonds issued by CAPP for the purpose of prepaying and funding the Capacity Prepayment plus cost of issuance of and reserve funds required to be maintained under such contract revenue bonds, said bonds to be secured by the pledge and assignment by CAPP to a trustee, pursuant to a trust agreement between CAPP and such trustee of the Capacity Prepayment Component of each Participating Member’s contract, it being stipulated and agreed that this Contract and each Participant Contract constitutes a contract under Subchapter A of Chapter 271, Local Government Code, State of Texas, as amended, payable from such respective Participating Member’s ad valorem taxes within the limits prescribed by law.

“Business Day” means any Day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. CPT and close at 5:00 p.m. CPT.

“Capacity Prepayment” has the meaning set forth in Section 7.1, below.

“CAPP” shall mean the Cities Aggregation Power Project, a political subdivision corporation in Texas organized pursuant to Local Government Code Chapter 304 for the purpose of contracting for electric power for Participating Members and for assisting in procurement of REP and QSE services for governmental electric accounts of Participating Members.

"Code" means Texas Local Government Code, Title 7, Chapter 271, Subchapter 1, Sections 271.151 through 271.160.

"Contract" shall mean this Energy Sales Contract and all related exhibits, as same may be amended from time to time by the mutual written agreement of the Parties.

"Contract Capacity" means 150 megawatts, being the Contract Capacity acquired by CAPP in the Facilities under the PPA on behalf of Member and the Participating Members.

"Contract Energy" has the meaning set forth in the PPA. Additionally, the Parties understand that if, in any Settlement Interval, the output of one or more of the Facilities is less than its Net Rated Capacity, due to a Planned Outage or Forced Outage as provided in the PPA, the Contract Energy may be reduced. In such an event, CAPP shall only receive a share of the output as provided in the PPA. In such event, the reduced amount of output received by CAPP will be delivered to and apportioned between Member and the other Participating Members based on their respective Member's Energy Allocation Percentages.

"Contract Price" has the meaning set forth in Section 6.1.

"CPT" means central prevailing time.

"Day" means the consecutive twenty-four (24) hour period beginning at 12:00:00 a.m. CPT on any calendar day and ending at 12:00:00 p.m. CPT on such calendar day.

"Default" has the meaning set forth in Article 11 hereof.

"Defaulting Member" shall mean one or more Participating Members that default under a Participant Contract that has been collaterally assigned in whole or in part as security for the repayment of the Bonds.

"Delivery Month" has the meaning set forth in the PPA.

"Delivery Period" means that period of time in which Energy shall be delivered to CAPP as agent for Member as the Energy is delivered by the Facility Owners under the PPA, commencing on January 1, 2009 at 12:01:00 a.m. CPT and ending on the earlier of: (i) 12:01:00 a.m. CPT on January 1, 2033, (ii) the date and time that the PPA is terminated in accordance with its terms, or (iii) the date and time that this Contract is rightfully terminated in accordance with its terms.

"Designated Agent(s)" means service providers such as, but not limited to, REPs, QSEs, and other market service product providers that are engaged from time-to-time by CAPP to act as agents for and representatives of CAPP, Member, and/or

Participating Members for the purposes of: (i) receiving and accounting for Products delivered by Facility Owners under the PPA, and Energy that is delivered to Member and Participating Members under this Contract and Participant Contracts, (ii) remitting payments, including payments of ERCOT fees, transmission fees, congestion fees, QSE fees, REP charges, and tariffs, (iii) allocating costs between Member and Participating Members, and/or (iv) billing, netting, and collecting sums due under this Contract.

“Effective Date” has the meaning set forth in the preamble of this Contract.

“Energy” has the meaning set forth in the PPA.

Energy Payment” means the product of the Energy Price times the number of megawatt hours delivered to Member .

“Energy Price” has the meaning set forth in Section 6.1(a)(i).

“ERCOT” shall mean the Electric Reliability Council of Texas, or its successor in function.

“ERCOT Guides” means the then-current ERCOT Operating Guides, Market Guides, Protocols, Nodal Protocols, Transaction Guides, and/or ISO procedures, as they may be amended from time to time.

“ESI-IDs” shall mean Electric Service Identifiers as defined in ERCOT Protocols, or their successor in function, same being the basic identifier assigned to each service delivery point used in the registration and settlement systems managed by ERCOT.

“Facilities” means the Big Brown Facility, Martin Lake Facility, and upon COD of the Oak Grove Unit 1 and Oak Grove Unit 2, the Oak Grove Facility as defined and described in the PPA, including, with respect to each, the land, structures, fixtures, equipment, machinery, lignite, and related auxiliary equipment required to operate each such facility.

“Facility Owner Delivery Points” means the point at a Facility at which Contract Energy is capable of being injected for the credit of CAPP into the ERCOT high voltage transmission system with Member and other Participating Members being fully responsible for reimbursing CAPP for any and all charges and assessments by ERCOT related to delivery of energy from the Facility Owner’s Delivery Points into the ERCOT high voltage transmission system.

“Facility Owners” shall mean Big Brown Power Company, LLC, Oak Grove Management Company, LLC, Luminant Generation Company, LLC, and their respective successors and assigns.

"Fiscal Year" means the fiscal year of Member.

"Forced Outage" has the meaning set forth in the PPA.

"Governmental Authority" has the meaning set forth in the PPA.

"Governmental Charges" has the meaning set forth in the PPA and which are charged to or payable by CAPP, including those Governmental Charges that survive the termination of the PPA.

"Guarantor" shall mean Texas Competitive Electric Holdings Company, LLC, a Delaware limited liability company.

"Guaranty" shall mean that certain Guaranty Agreement executed by Guarantor and delivered to CAPP at closing.

"Interest and Sinking Fund" means that a special fund or account designated as the **"City of _____ Electric Public Property Finance Contractual Obligation Interest and Sinking Fund"**, authorized, established and maintained in a depository bank of the Member, so long as the contractual obligation to make Monthly Capacity Payments hereunder are outstanding and unpaid.

"kW" means kilowatt(s).

"Law" means (i) any law, legislation, statute, act, rule, ordinance, decree, treaty, regulation, order, judgment, or other similar legal requirement, and (ii) any legally binding announcement, directive or published practice or interpretation thereof, including but not limited to, ERCOT Guides, enacted, issued or promulgated by any Governmental Authority having jurisdiction over this Contract, the Facilities, and the delivery of Energy pursuant to this Contract.

"Martin Lake Facility" means Unit 1, Unit 2, and Unit 3 of the Martin Lake generating station located in Rusk County, Texas, with an approximate cumulative Net Rated Capacity of 2,345 megawatts as of the Effective Date of the PPA.

"Member Contract Energy Allocation" shall equal the product of the Member's Energy Allocation Percentage and the Contract Energy during each Delivery Month of the Delivery Period.

"Member's Monthly Aggregated Energy Payment" has the meaning set forth in Section 6.1(a).

"Member's Energy Allocation Percentage" is 0.18%, being calculated by multiplying 100 by a fraction, the numerator of which is Member estimated energy required during the Base Year, and the denominator of which is the

estimated total energy requirement of all Participating Members during the Base Year.

“Member’s Delivery Points” shall be all ESI-IDs accounts that Member has for receipt of energy to the revenue meters of such Member that are metered and the light fixtures for street/outdoor lights or other accounts of such Member that are not metered.

“Member’s Unique Delivery Costs” shall have the meaning set forth in Section 6.1(b) hereof.

“Monthly Capacity Payment” shall have the meaning set forth in Article 7 below.

“Monthly Energy Payment” means the product of the Monthly Energy Price times Member’s Energy Allocation Percentage times the megawatt hours delivered to CAPP by the Facility Owners during the Delivery Month.

“Monthly Energy Price” means the price per megawatt hour as set forth in the PPA.

“MW” means megawatt.

“MWh” means megawatt hour.

“New Governmental Charges” means (i) any Governmental Charges enacted and effective after the Effective Date, including without limitation, that portion of any Governmental Charges or New Governmental Charges that constitutes an increase or that cause the Facility or Facilities to incur additional or new expenses less Governmental Charges enacted or imposed prior to the Effective Date that are replaced by the New Governmental Charge and that become payable by CAPP under the PPA, (ii) any Law or interpretation thereof, enacted and effective after the Effective Date resulting in a new or additional expense to the Facility or the Facilities or the application of any Governmental Charges to a new or different class of parties and that become payable by CAPP under the PPA.

“Oak Grove Facility” means, when the first commercial operation date is reached, Oak Grove Unit 1 and Oak Grove Unit 2 of the lignite coal- fired power generation facility known as the Oak Grove Generating Station located in Robertson County, Texas.

“Ordered Backdown” has the meaning set forth in Section 5.2 of the PPA.

“Participant Contracts” means those individual contracts between CAPP and a Participating Member under which such Participating Member is acquiring a portion of the Contract Energy that CAPP is acquiring for the benefit of all

Members under the PPA. Such term has the same meaning as the term "Member Output Contract" in the PPA. This Contract is one of the Participant Contracts.

“Participating Members” shall mean those members of CAPP that enter into contracts with CAPP for the procurement of electric energy from the Facilities. A list of Participating Members is attached to this Contract as Exhibit “A” and incorporated by this reference herein for all purposes. Member is one of the Participating Members.

“Person” means a natural person, corporation, electric cooperative, partnership, trust, association, joint venture, real estate investment trust or business trust (including any beneficiary thereof), unincorporated association, Governmental Authority, and any other form of business or legal entity.

“Planned Outage” has the meaning set forth in Section 6.1 of the PPA.

“PPA” shall mean that certain Power Purchase Agreement between CAPP and the Facility Owners, a copy of which is attached hereto as Exhibit “B” and incorporated by this reference herein for all purposes.

“Product” or ***“Products”*** means Contract Capacity, Contract Energy and Alternate Energy, if any, received by CAPP from the Facility Owners under the PPA.

“QSE” means the entity which is responsible for performing the responsibilities defined for a Qualified Scheduling Entity under the ERCOT Guides, or their successor in function.

“Regulatory Authorities” has the meaning found in the Utilities Code Vernon’s Texas Codes Annotated.

“REP” means Retail Electric Provider, as defined in ERCOT Protocols.

“REP Services” shall mean all services that a REP provides that are associated with the provision of electric service to a retail customer by a REP in ERCOT.

“Replacement Price” has the meaning in the PPA.

“Resale Price” has the meaning in the PPA.

“Service Commencement Date” has the meaning set forth in Section 3.2 hereof and shall be one minute before 12:01 a.m. CPT on January 1, 2009.

“Settlement Interval” has the meaning as set forth in the ERCOT Guides.

“Term” has the meaning set forth in Section 3.1 hereof.

“Transmission Losses” means losses associated with the transmission of Energy under this Contract and under the PPA from resources used by (a) the Facility Owners to the Delivery Points for the respective Facility Owners, and (b) the Designated Agent(s) from the Facility Owners’ Delivery Point to Member's Delivery Points as determined in accordance with the ERCOT Guides.

“Transmission Service Provider” has the meaning found in the Utilities Code.

“Trustee” means the trustee related to the Bonds pursuant to an indenture of trust with CAPP.

“Unit” means each of the generating units at the Big Brown Facility, the Oak Grove Facility and the Martin Lake Facility that are then the subject of the PPA.

“Unit Contingent Energy” means the Contract Energy supplied to CAPP for delivery to Participating Members from the Facilities under the terms of the PPA, for which non-delivery is excused if: (i) a Facility is unavailable as a result of a Forced Outage or a Planned Outage; (ii) CAPP fails to perform any of its obligations under the PPA; or (iii) an event of Force Majeure prevents delivery of such Energy to CAPP.

“Wrap Contract” means any energy service contract executed by CAPP on behalf of Participating Members for electrical service requirements in addition to the PPA and other associated and ancillary services necessary to fulfill the full requirements for each of the Members electric power needs.

1.2 Principles of Interpretation. Unless the context requires otherwise, any reference in this Contract to any document means such document and all schedules, exhibits, and attachments thereto as amended and in effect from time to time. Unless otherwise stated, any reference in this Contract to any Person or Party includes its permitted successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities. The words “*hereof*”, “*herein*” and “*hereunder*” and words of similar import when used in this Contract, unless otherwise expressly specified, refers to this Contract as a whole and not to any particular provision of this Contract. The singular includes the plural, and the masculine includes the feminine and neuter genders. Whenever the term “*including*” is used herein in connection with a listing of items included within a prior reference, such listing shall be interpreted to be illustrative only, and shall not be interpreted as a limitation on or exclusive listing of the items included within the prior reference. The language used in this Contract is deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party. All times set forth in this Contract shall be construed to be CPT.

ARTICLE 2
CAPP'S OBLIGATIONS CONTINGENT UPON
PERFORMANCE BY FACILITY OWNERS UNDER THE PPA;
ASSUMPTION BY MEMBER

2.1 Nature of CAPP's obligations to Member. Member agrees and understands that CAPP has entered or shall enter the PPA on behalf of Member and all Participant Members for the purpose of achieving the benefits set forth in the Recitals, above, including contracting for less than market prices for energy. Member understands that CAPP is not a power provider or power deliverer. Member agrees and understands that CAPP's obligation to perform its covenants under this Contract is absolutely contingent upon the performance of obligations of the Facility Owners and Guarantor to CAPP under the PPA, including, but not limited to, timely delivery of the Products in the quantities required under the PPA.

2.2 CAPP's duty to exercise remedies under the PPA and Guaranty; power coupled with an interest. In the event that the Facility Owners, without an excuse or right permitted under the PPA, fail to deliver the Products and/or fail to perform their obligations to CAPP as required under the PPA and Guaranty, then CAPP, on behalf of itself, Member, and the Participating Members, may exercise one or more of the remedies available to it under the PPA, the Guaranty, or both, as the Board of Directors of CAPP shall determine in its sole judgment and discretion. To the fullest extent necessary, Member hereby irrevocably appoints CAPP as its agent and attorney-in-fact to exercise such of the remedies available to CAPP under the PPA, that CAPP, in the sole judgment and discretion of its Board of Directors, believes to be the best interests of the Parties and Participating Members. Member agrees and understands that the power granted by it to CAPP in this Section 2.2 is and shall be construed to be a power coupled with an interest that cannot be revoked during the Term of this Contract. It is further agreed and understood that Member's obligation to pay the sums set forth in Article 6 and Article 7 on the dates set forth in Article 8, below, shall not be excused, offset, or mitigated on account of a default by Facility Owners under the PPA or by the failure of Facility Owners to deliver the Products.

2.3 Assumption of PPA by Member. Member agrees and understands that CAPP has entered or will enter into the PPA for the benefit of Member and Participating Members to the extent of their respective Member's Energy Allocation Percentages. For the consideration set forth in this Contract, Member assumes CAPP's obligations under the PPA, to the extent of Member's Energy Allocation Percentage, provided, however, that such rights and obligations shall be exercised on Member's behalf as the Board of Directors of CAPP shall determine in its sole and absolute discretion.

ARTICLE 3

TERM OF CONTRACT AND DELIVERY OF PRODUCTS

3.1 Term. The term ("*Term*") of this Contract shall commence on the Effective Date, and shall continue until the later of: (a) January 1, 2033 at 12:00:00 a.m., or (b) the date that the Bonds have been repaid in full and all covenants required to be performed and all interest and costs required to be paid by CAPP under the Bonds have been performed and paid in full by CAPP.

3.2 Delivery of Products. A Member's Contract Energy Allocation of the Products shall be provided by CAPP to Member as set forth herein at 12:00:00 a.m. CPT on January 1, 2009 (the "*Service Commencement Date*") provided that the Products are then commenced to be delivered by Facility Owners to CAPP under the PPA. Thereafter, the Products shall be received by CAPP or its Designated Agent(s) for the benefit of and as agent for Member as the Products are delivered by Facility Owners under the PPA until the earlier of: (a) one second following 11:59:59 p.m. CPT on December 31, 2032, (b) the date that the PPA is terminated in accordance with its terms, or (c) the date that this Contract is terminated in accordance with its terms ("*Delivery Period*"). In the event that the Facility Owners fail to deliver all of the Products they are required to deliver under the PPA, Member shall be entitled to receive only Member's Energy Allocation Percentage of the Products actually delivered to and received by CAPP, net of Transmission Losses

ARTICLE 4

PAYMENT OF CAPACITY PREPAYMENT TO FACILITY OWNERS

Provided that the PPA has not been terminated by CAPP or by the Facility Owners prior to the Service Commencement Date pursuant to Article 11 of the PPA, CAPP shall pay or cause the Capacity Prepayment to be paid to Facility Owners on or before the date described in said Section 4.1(b) of the PPA. CAPP and Member stipulate and agree that the Capacity Prepayment shall be paid to the Facility Owners as required by the PPA, in whole or in part, from the proceeds of the Bonds, interest earned while such Bond proceeds are escrowed, and, as CAPP may elect, funds paid to CAPP by Member and Participating Members.

ARTICLE 5

DELIVERY OF CONTRACT ENERGY

5.1 Acquisition and Delivery of Product. Upon the Service Commencement Date, CAPP shall require (i) Facility Owners to provide and deliver the Contract Energy described in the PPA to the Designated Agent(s) at the Facility Owners' Delivery Point, and (ii) the Designated Agent(s) to deliver Energy to Member at the Member's Delivery Points, in both cases from Products generated from the Facilities or acquired by the

Facility Owners for delivery under the PPA as Alternate Energy pursuant to Section 5.3 of the PPA.

5.2 Title and Risk of Loss. Risk of loss of the Energy provided in accordance with this Contract shall transfer to CAPP as agent for Member and Participating Members at the Facility Owners' Delivery Points. Title to the Energy (subject to loss) shall be held by CAPP as agent for Member and Participating Members between the Facility Owners' Delivery Points and Member's Delivery Points.

5.3 Member's Failure to Accept Product. If Member fails to accept all or part of the Product under this Contract and such failure is not excused under the terms of this Contract or by failure of the Facility Owners to deliver same under the PPA, then Member shall pay to CAPP or to the Designated Agent(s) from time-to-time designated by CAPP, on the date payment would otherwise be due with respect to the month in which the failure occurred, an amount for each MWh of such deficiency equal to the positive difference, if any, obtained by subtracting the Resale Price from the Contract Price. The invoice for such amount shall include reasonable detail as to the calculation of such amount.

5.4 Failure of Facility Owners to Schedule or Deliver Product to CAPP. If one or more of the Facility Owners fail to schedule and/or deliver all or part of the Product as required by it under the PPA, and such failure is not excused under the terms of the PPA or by CAPP's failure to perform, then CAPP or the then-designated Designated Agent(s) shall, on behalf of all Participating Members, at the expense of and in the proportion of their respective Member's Energy Allocation Percentages, seek to collect sums from the Facility Owners that are recoverable pursuant to Section 3.4 of the PPA; provided, however, that any obligation by CAPP or by the Designated Agent(s), as the case may be, to pay Member in such event is limited to the amount that CAPP or the Designated Agent(s) actually collect from the Facility Owners and the Guarantor, net of costs of collection. For the avoidance of doubt, CAPP shall not be required to pay damages under this Section 5.4 when the failure to schedule and/or deliver is excused under the definition of Unit Contingent Energy.

ARTICLE 6 PRICING OF AND PAYMENT FOR ENERGY

6.1 Payment of Member's Monthly Aggregated Energy Payment. In consideration for the Energy received by it under this Contract, Member shall pay Member's Monthly Aggregated Energy Payment to CAPP, or to the Designated Agent(s), as the case may be, on or before the dates for payment set forth in Article 8, below, and calculated as follows:

(a) Calculation of Member's Monthly Energy Payment. Commencing on the Service Commencement Date, and continuing during each Delivery Month during the Term, but subject to annual appropriation therefore by Member during such Member's Fiscal Year, Member shall pay to CAPP, or to the Designated Agent(s) from time-to-time designated by it, the Member's Monthly Energy Payment, as computed monthly pursuant to the provisions of this Section 6.1(a). The Member's Monthly Energy Payment shall be the sum of (i) the Energy Component of Member's Energy Payment and (ii) the Aggregated Expenses Component of Member's Energy Payment, both determined as follows:

(i) Energy Component of Member's Monthly Energy Payment. The price of Energy deliverable to CAPP under the PPA at the Facility Owners' respective Delivery Points during the Delivery Month as provided in the PPA is set forth in the schedule attached hereto as Exhibit "D" and incorporated herein by reference herein for all purposes. The Parties recognize that the PPA calls for the Contract Energy to be delivered to CAPP at the Facility Owners' respective Delivery Points at which points the Energy Payment is measured and calculated pursuant to Section 4.1(a) of the PPA. The Wrap Contracts shall provide that the cost of energy delivered to Member will be measured at Member's Delivery Points. The price of energy deliverable to CAPP under the Wrap Contracts shall be at a price determined by negotiations at that time. Member recognizes that the Energy Component in the monthly invoices will reflect a blended rate per MWh taking into account the Energy provided to all Participating Members under all energy procurement contracts and shall include (1) the cost of Contract Energy; (2) ancillary services under Section 3.5 of the PPA; (3) the cost of engaging a QSE under Section 7.1 of the PPA or under any Wrap Contracts; (4) the cost of engaging a REP under the PPA or under any Wrap Contracts; (5) the cost of delivering the Contract Energy to the Delivery Points of all Participating Members from the Facility Owners' respective Delivery Points; and (6) the cost of energy and other expenses associated with one or more Wrap Contract. The Energy Component of Member's Monthly Energy Payment shall be computed as the product of such blended rate and the total Energy delivered to Member's Points of Delivery during the billing month.

(ii) Aggregated Expenses Component of Member's Monthly Energy Payment. The total Aggregated Expenses for each Delivery Month shall be allocated and apportioned between Member and each of the other Participating Members based upon each Member's Energy Allocation Percentage. The total amount so allocated to Member shall be billed to Member on a monthly basis by CAPP or its Designated Agent(s) as they shall determine appropriate.

(b) Member's Unique Delivery Costs. The Parties further recognize that Member and each of the Participating Members require delivery of the Energy by the Designated Agent(s) from the Facility Owners Delivery Point to their respective Member's Delivery Points, the cost of which may vary between Participating Members based on a number of factors, including, but not limited to, distance from the Facility Owners Point of Delivery, differing zones into which Energy shall be delivered, different tariffs that may change from time to time as ordered by Regulatory Authorities, loss of Energy during transmission, and differing contractual arrangements that must be made to effect the delivery of Energy to the required points of delivery. In this connection, CAPP shall, as agent for Participating Members (including Member) (i) enter into one or more contracts with Designated Agent(s) for delivery of the Products to all Participating Members from the Facility Owners Delivery Point to each of their respective Member's Delivery Points, and (ii) require the Designated Agent(s) to separately account to and bill each Participating Member for the unique costs that are associated with delivery of the Energy from the Facility Owners Point of Delivery. Commencing on the Service Commencement Date, and continuing during each Delivery Month during the Term, but subject to annual appropriation therefore by Member during such Member's Fiscal Year, Member shall pay to CAPP or to the Designated Agent(s) from time-to-time designated by it the Member's Unique Delivery Costs. The Member's Unique Delivery Costs shall be due and payable at the same time that the Member's Aggregated Monthly Energy Payment is due.

(c) Governmental Charges and New Governmental Charges. Member shall pay or cause to be paid all Governmental Charges on or with respect to the Product at and from the Facility Owners' Delivery Points. In the event CAPP and/or the Designated Agent(s) are required by Law to remit or pay Governmental Charges which are Member's responsibility hereunder, or in the event that CAPP must remit or pay to Facility Owners for Governmental Charges that it may pass through to CAPP for reimbursement under the PPA, CAPP shall notify Member of the amount of Governmental Charges owed, whether such payment is to Facility Owners or to the governmental entities that made such Governmental Charges, on Member's behalf. Such notice shall be provided in a commercially practicable manner and may be provided by a Designated Agent. Notwithstanding any other provision of this Contract to the contrary, if a New Governmental Charge (as defined in the PPA) is passed through to CAPP for reimbursement, including but not limited to New Governmental Charges imposed on all coal and lignite generating facilities in ERCOT, including the Product, and CAPP's share of any such New Governmental Charge is greater than the Materiality Threshold set forth in the PPA (after taking into account the application of any entitlements and the extent of old charges that are replaced by the New Governmental Charge), such charges shall be treated as though they were incurred by CAPP for the benefit of all Participating Members (including Member). All Governmental Charges and New Governmental Charges shall be apportioned between Member and the Participating Members as an energy charge reflected on monthly bills from a Designated Agent. If, as, and when CAPP pays Governmental Charges and New Governmental Charges, it shall be deemed to have paid same on behalf of Member and all Participating Members in the proportion stated immediately above, and Member shall pay CAPP and/or the Designated Agent(s)

its proportionate share, subject, however, to Appropriation by Member during Member's Fiscal Year. The obligation to pay such Governmental Charges and New Governmental Charges shall continue until such time as reimbursement of Facility Owners therefore are no longer required by the PPA.

(d) Adjustments. Section 4.2 of the PPA provides for monthly adjustments if the Equivalent Availability Factor for such month is greater or less than 90%. It is the intention of the Parties to this Contract that (i) such credits and supplemental payments shall be allocated and passed through to Member and each of the **other** Participating Members, on a pro rata basis, in the month payable or credited against the Energy Payment based on an energy basis and (ii) the Designated Agent responsible for billing shall net the adjustments under Section 4.2 of the PPA against other amounts owed. It is understood that Member's obligation to pay any adjustments under this Section 6.1(d), as part of an Energy Payment or Payments, is subject to appropriation by Member during Member's Fiscal Year.

(e) Other Adjustments. In the event that inequities arise between Participating Members or between Member and Participating Members in energy based allocation of credits and supplemental charges under this or other energy contracts, the Board of Directors of CAPP, in its sole discretion, may direct further adjustments as necessary to preserve the integrity of the allocation process and relative economic position of Member and Participating Members; provided, however, no adjustments shall affect the obligation to make Capacity Payments under Article 7 of this Contract.

6.2 Payments through Retail Electric Provider and Designated Agent(s). CAPP reserves the right to bill and invoice Member and Participating Members for the Contract Price, collect sums due by Member and Participating Members under Article 6, pay sums to Facility Owners that CAPP is required to pay pursuant to the terms of the PPA, collect payments and credits due to CAPP by the Facility Owners, and allocate and distribute credits and payments received from Facility Owners and third parties to Member and Participating Members as their respective interests appear through a REP or through Designated Agent(s). Notwithstanding the foregoing, it is expressly agreed and understood that (a) the Capacity Payments required to be paid by Member pursuant to Section 7, below, must be paid by Member directly to CAPP or the Trustee, and (b) payments received by CAPP or by Member from the Facility Owners, Guarantor, or any of same as a result of Early Termination of the PPA as defined in and calculated under Article 12 of the PPA must be paid by the recipient of such payments directly to CAPP or the Trustee for application to the Bonds.

6.3 Payments from Available Funds. Notwithstanding any provision herein to the contrary, the obligations of Member under this Contract to make Energy Payments shall be payable solely from the Available Funds received in each Fiscal Year during the Term of this Contract. The obligation of the Member to make any Energy Payments pursuant to this Contract shall constitute a current expense of Member during each Fiscal Year and shall not constitute an indebtedness of Member within the meaning of the laws of the

State of Texas. Nothing in this Contract shall constitute a pledge by the Member of any taxes or other money, other than such funds so Appropriated and received in each Fiscal Year during the Term of this Contract and constituting Available Funds, to the payment of any Energy Payment due or to become due hereunder.

6.4 Intent to Continue Payments. Member presently intends to continue this Contract for the entire Term and to pay all Energy Payments required hereunder. Member presently intends to appropriate, from lawfully Available Funds received in each Fiscal Year, money sufficient to pay the Energy Payments required hereunder. However, Member has no obligation to, and makes no representation that it will, appropriate or seek to appropriate in any Fiscal Year Available Funds for the payment of Energy Payments due pursuant to this Contract.

6.5 Failure to appropriate Available Funds. If, for any Fiscal Year of the Member, the Member does not appropriate Available Funds received during such Fiscal Year to pay the Energy Payments required under this Contract due and payable by Member during the succeeding Fiscal Year, and if the Member provides CAPP with written notice of such failure to appropriate thirty (30) days prior to the expiration of Member's then-current Fiscal Year, the obligation to take electric Energy from CAPP under this Contract and make Energy Payments for such electric energy shall terminate and be canceled at the end of such current Fiscal Year for the period of the next Fiscal Year for which the Member has failed to appropriate Available Funds. The written notice shall be accompanied by a statement as to whether or not Member has made an assignment to another Participating Member under Section 6.6 hereof. The Member may appropriate Available Funds for any subsequent Fiscal Year for Energy Payments due during such subsequent Fiscal Year and then shall be entitled to receive electric Energy from CAPP under this Contract for such Fiscal Year.

6.6 Assignment Upon Failure to appropriate. For any Fiscal Year which the Member has failed to appropriate for Energy Payments (or portion thereof), the Member may assign to another Participating Member all or a portion of such non-appropriating Member's right to receive electric energy for such Fiscal Year provided the Participating Member certifies to CAPP that the assigned electric energy will be utilized by such Participating Member for its buildings and facilities, in compliance with the Local Government Code Chapter 304. The Energy Payments associated to such assigned right to such electric energy shall be calculated according to the terms of this Contract (assuming the Member was receiving such electric energy). At such time the Member provides written notice of its failure to appropriate for Energy Payments for any Fiscal Year, the Member may also give written notice to CAPP of its assignment of all or a portion of its right to receive electric energy under this Contract, including a written agreement between the Member and the Participating Member reflecting the terms and conditions of such assignment. Prior to the beginning of the relevant Fiscal Year, the assuming Participating Member must provide CAPP written notice of (i) its appropriation for the Energy Payments associated with the assumed electric energy for the period of the non-appropriating member's Fiscal Year which such non-appropriation is applicable (or portion thereof), (ii) certification that such assumed electric energy will

be utilized by such Participating Member for its buildings and facilities, in compliance with the Local Government Code Chapter 304 and (iii) a valid and binding assignment agreement between the Member and the Participating Member. If the Member failing to appropriate for Energy Payments does not assign the Energy to another Participating Member within 30 days following the failure to appropriate, Member shall assign the Energy to CAPP, and CAPP shall have the right to assign to a Participating Member, or to otherwise dispose of the Energy in a commercially practicable manner.

6.7 Appropriated Energy Payments to be Unconditional. Except as provided herein, including Section 6.3 hereof, the obligation of Member to make Energy Payments each Fiscal Year from funds that have been appropriated for such purpose when due shall be absolute and unconditional. Notwithstanding any dispute between Member and CAPP or any other Participating Member or person, the Member shall make all Energy Payments required hereunder when due and shall not withhold any such payments pending final resolution of such dispute, nor shall Member assert any right of set-off or counterclaim against its obligation to make such payments required under this Contract. Member's obligation to make Energy Payments during the Term shall not be abated because of accident or unforeseen circumstances. However, nothing herein shall be construed to release CAPP from the performance of its obligations hereunder; if CAPP should fail to perform any such obligation, Member may institute such legal action against CAPP as Member may deem necessary to compel the performance of such obligation. Notwithstanding anything to the contrary above, Member's obligation to pay Energy Payments shall not require it to pay Energy Payments from any source other than Available Funds specifically appropriated by Member for payment of the Energy Payments.

6.8 CAPP as Third Party Beneficiary. Member acknowledges that CAPP is an intended third party beneficiary of all Appropriations made by Member for sums described in this Article 6. As part of the consideration for this Contract, Member grants to CAPP and to any Designated Agent(s) appointed by CAPP all rights to enforce, by a mandamus action against Member and its governing body, such provisions for each Fiscal Year of Member for which there has been an Appropriation as contemplated in this Article.

6.9 Member's Default of the Energy Payment Covenants and CAPP's Remedies.

(a) Events of Default. Each of the following occurrences or events for the purpose of this Contract is hereby declared to be a Default:

(i) The failure to make payment of the Energy Payment when the same becomes due and payable; or

(ii) Default in the performance or observance of any other covenant, agreement or obligation of the Member, the failure to perform which materially, adversely affects CAPP, including, but not limited to, its

prospect or ability to be repaid in accordance with this Contract, and the continuation thereof for a period of 30 days after notice of such default is given by CAPP or Trustee to the Member.

(b) Remedies for Default.

(i) Upon the occurrence of a Default, then and in every case, CAPP or an authorized representative thereof may proceed against the Member, or any official, officer or employee of the Member in their official capacity, for the purpose of protecting and enforcing the rights of CAPP under this Contract, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of CAPP hereunder or any combination of such remedies.

(ii) It is provided that all such proceedings shall be instituted and maintained for the benefit of CAPP.

(c) Remedies Not Exclusive.

(i) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Contract, the right to accelerate the Energy Payments shall not be available as a remedy under this Contract.

(ii) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy. The failure to exercise a remedy upon a Default shall not be deemed to be a waiver of the right to exercise such remedy in the future.

(iii) By accepting the delivery of Energy Payment authorized under this Contract, CAPP agrees that the certifications required to effectuate any covenants or representations contained in this Contract do not and shall never constitute or give rise to a personal or pecuniary liability or charge against the officers, employees or trustees of the Member.

(iv) No official or officer, agent, or employee of the Member, shall be charged personally by CAPP or the Trustee with any liability, or be held personally liable under any term or provision of this Contract, or because of a Default or Default under this Contract.

ARTICLE 7
CAPACITY PREPAYMENT, MEMBER'S MONTHLY CAPACITY PAYMENT
AND PLEDGE OF AD VALOREM TAXES BY MEMBER

7.1 Capacity Prepayment. In order to procure Energy at favorable rates produced in the Facilities by the Facility Owners under the PPA, CAPP, at the request of Member and the other Participating Members, shall (i) prepay to Facility Owners the sum of \$465,000,000.00 (the "***Capacity Prepayment***") from the proceeds of the Bonds (ii) establish a reserve fund under the Bonds as may be required for issuance of the Bonds, and (iii) pay costs and charges associated with issuance of the Bonds, including legal fees, accounting fees, and consultant's fees engaged by the bond issuer, bond counsel, and CAPP. The Capacity Prepayment shall be paid to Facility Owners as provided in Section 4.1 hereof and as provided in Section 4.1(b) of the PPA. Once the actual amount of the Bonds and the interest rate established thereunder are known, this Contract shall be amended by CAPP and Member to reflect such facts, and to stipulate the amount of Member's Monthly Capacity Payment. It is the intention of the Parties that CAPP shall receive from Member and each Participating Member through the Monthly Capacity Payment set forth in Section 7.2(a), based upon the Member's Energy Allocation Percentage of each, the amount sufficient to pay: (i) CAPP's costs to issue the Bonds, (ii) the principal and redemption premium, if any, of and interest on the Bonds, (iii) trustee and other administrative fees, and (iv) other costs associated therewith.

7.2 Capacity Payment.

(a) Member shall pay CAPP, its Designated Agent or the Trustee, as CAPP shall direct, upon the assignment of all or a portion of this Contract by CAPP to such trustee, a Monthly Capacity Payment for each Delivery Month throughout the remainder of the Term, or until such earlier date as such Monthly Capacity Payments have been prepaid or otherwise fully defeased as provided in Section 7.4 hereof, in an amount equal to the amount shown in Exhibit "E" times the Member Energy Allocation Percentage.

(b) It is hereby certified and covenanted that the contractual obligation to make the Monthly Capacity Payments when due, as described in subsection (a) above, has been duly and validly authorized and delivered; that all acts, conditions and things required or proper to be performed, exist and be done precedent to or in the authorization and delivery of this Contract have been performed, existed and been done in accordance with law; that the contractual obligation to make the Monthly Capacity Payments herein is a limited tax obligation of Member; and that annual ad valorem taxes, within the limits prescribed by law, sufficient to provide for the payment of the Monthly Capacity Payments, as such payments come due, have been levied and ordered to be levied against all taxable property in Member, and have been pledged from Member's annual ad valorem maintenance tax for such payment, within the limit prescribed by law.

(c) It is understood and agreed that all Monthly Capacity Payments payable by the Member under this Article 7 are assigned by CAPP to the Trustee for the benefit of the Owners of the Bonds. The Member assents to such assignment.

7.3 Interest and Sinking Fund; Tax Levy for Monthly Capacity Payments. The Interest and Sinking Fund shall be kept separate and apart from all other funds and accounts of Member, and shall be used only for paying the Monthly Capacity Payments when due. All ad valorem taxes levied and collected for and on account of the Monthly Capacity Payments shall be deposited, as collected, to the credit of the Interest and Sinking Fund. During each Fiscal Year while a Monthly Capacity Payment is outstanding and unpaid, the governing body of the Member shall compute and ascertain a rate and amount of ad valorem tax which together with any other lawfully available funds that are on deposit in the Interest and Sinking Fund at the time of such levy will be sufficient to provide and maintain a sinking fund adequate to pay the Monthly Capacity Payments as such payments become due (but never less than 2% of the original aggregate amount of the Monthly Capacity Payments as a sinking fund each year); and said tax shall be based on the latest approved tax rolls of the Member, with full allowance being made for tax delinquencies and the cost of tax collection. Said rate and amount of ad valorem tax is hereby levied and is hereby ordered to be levied, against all taxable property in the Member for each year while any of the Monthly Capacity Payments are outstanding and unpaid; and said tax shall be assessed and collected each such year and deposited to the credit of the aforesaid Interest and Sinking Fund. Said ad valorem taxes to be sufficient to provide for the payment of the Monthly Capacity Payments, as such payments come due, are hereby pledged for such payment, within the limit prescribed by law.

7.4 Prepayments based upon Early Termination under the PPA. In the event that CAPP shall receive a Buyer Termination Payment under Article 12 of the PPA, such amount shall be assigned and paid to the Trustee for payment on the Bonds with such payment to be applied to a prorata redemption of all outstanding maturities of such Bonds. Such prorata redemption on the Bonds shall similarly be applied prorata to reduce Member's Monthly Capacity Payments and the Monthly Capacity payments of other Participating Members. If any balance of the Bonds remains unpaid after application of the Buyer Termination Payment, then notwithstanding the obligation to pay the Monthly Capacity Payment under Section 7.2 above, Member shall pay Member's Energy Allocation Percentage of such balance within thirty (30) days following receipt of notice from CAPP.

7.5 CAPP and Trustee as Third Party Beneficiaries. Member acknowledges that CAPP and Trustee are intended third party beneficiaries of the obligation to pay Monthly Capacity Payments and to make provision for payment from ad valorem tax revenues. As part of the consideration for this Contract, Member grants to CAPP and to Trustee all rights to enforce, by a mandamus action against Member and its governing body, the provisions and obligations of this Article 7.

7.6 Monthly Capacity Payments to be Unconditional. Except as provided herein, including Section 6.3 hereof, the obligation of Member to make Monthly Capacity Payments when due shall be absolute and unconditional. Notwithstanding any dispute between Member and CAPP or any other Participating Member or person, the Member shall make all Monthly Capacity Payments required hereunder when due and shall not withhold any such payments pending final resolution of such dispute, nor shall Member assert any right of set-off or counterclaim against its obligation to make such payments required under this Contract. Member's obligation to make Monthly Capacity Payments during the Term shall not be abated because of accident or unforeseen circumstances. However, nothing herein shall be construed to release CAPP from the performance of its obligations hereunder; if CAPP should fail to perform any such obligation, Member may institute such legal action against CAPP as Member may deem necessary to compel the performance of such obligation.

7.7 Member's Default on Capacity Prepayment and CAPP's Remedies.

(a) Events of Default. Each of the following occurrences or events for the purpose of this Contract is hereby declared to be a Default:

(i) The failure to make payment of the Capacity Prepayment when the same becomes due and payable; or

(ii) Default in the performance or observance of any other covenant, agreement or obligation of the Member, the failure to perform which adversely affects CAPP, including, but not limited to, its prospect or ability to be repaid in accordance with this Contract, and the continuation thereof for a period of 30 days after notice of such default is given by CAPP or Trustee to the Member.

(b) Remedies for Default.

(i) Upon the happening of a Default, then and in every case, CAPP or an authorized representative thereof, including, but not limited to, the Trustee, may proceed against the Member, or any official, officer or employee of the Member in their official capacity, for the purpose of protecting and enforcing the rights of CAPP under this Contract, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of CAPP hereunder or any combination of such remedies.

(ii) It is provided that all such proceedings shall be instituted and maintained for the benefit of CAPP and/or owners of the Bonds.

(c) Remedies Not Exclusive.

(i) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Contract, the right to accelerate the PPA Capacity Payments shall not be available as a remedy under this Contract.

(ii) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy. The failure to exercise a remedy upon a Default shall not be deemed to be a waiver of the right to exercise such remedy in the future.

(iii) By accepting the delivery of the Capacity Prepayment authorized under this Contract, CAPP agrees that the certifications required to effectuate any covenants or representations contained in this Contract do not and shall never constitute or give rise to a personal or pecuniary liability or charge against the officers, employees or trustees of the Member.

(iv) No official or officer, agent, or employee of the Member, shall be charged personally by CAPP or the Trustee with any liability, or be held personally liable under any term or provision of this Contract, or because of a Default or Default under this Contract.

ARTICLE 8 BILLING AND PAYMENT

8.1 Invoice and Payment Schedules. CAPP shall cause the Designated Agent(s) to submit invoices to Member for the Contract Price. All such invoices under this Contract shall be due and payable in accordance with the invoice instructions of the Designated Agent(s) consistent with ERCOT protocols, Rules of the Public Utility Commission of Texas, and contractual agreements between CAPP and Designated Agents. CAPP will cause the Designated Agent(s) to render to Member a separate invoice for the Contract Price for each ESI-ID on a billing month basis. All Monthly Capacity Payment invoices under this Contract pursuant to Article 7, shall be separately due and payable directly to CAPP or the Trustee in accordance with the invoice instructions of CAPP, Trustee or Designated Agent.

8.2 Method of Payment. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue

interest at the Interest Rate, such interest to be calculated from and including the due date, but excluding the date the delinquent amount is paid in full. Because certain charges are aggregated between Member and Participating Members, Member understands that a failure to timely pay an invoice may result in additional costs, interest charges, and damages that CAPP may be required to pay to Facility Owners under the PPA and that are disproportionate to the default by Member. Member agrees, in the event of its default, to reimburse CAPP for all costs, interest charges, and damages that it may be required to pay to Facility Owners that result from Member's default under this Contract. Except for Capacity Payments that are required to be paid by Member directly to CAPP or the Trustee, CAPP may require Member to pay all or any of the payments required to be paid by Member under this Contract to Designated Agent(s) appointed by CAPP.

8.3 Netting. Member understands that CAPP and Facility Owners have agreed to discharge mutual debts and payment obligations due and owing to each other on the same payment due date pursuant to the PPA through netting, so that only the excess amount remaining due shall be paid by the Party who owes such excess amount. All payment obligations of the Parties and all rights to receive payment under this Contract are subject to the netting provisions contained in the PPA. Additionally, it is understood that Designated Agents may net credits and supplemental payments in monthly invoices of the Contract Price.

8.4 Disputed Charges. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Contract or adjust any invoice for any arithmetic or computational error within twenty-three (23) months of the date the invoice, or adjustment to an invoice, was rendered, except when a dispute is limited by ERCOT protocols, Rules of the Public Utility Commission or contracts between CAPP and Designated Agents. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved unless CAPP is required to pay the disputed amount to Facility Owners under the PPA. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution (along with interest accrued, if any, on account thereof under the PPA). Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued only to the extent it accrues under the PPA. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 8.4 within twenty-three (23) months or shorter period if required by ERCOT protocols, Rules of the Public Utility Commission or contracts between CAPP and Designated Agents after the invoice is rendered or any specific adjustment to the invoice is made.

8.5 Audits. Each Party has the right, at its sole expense and during normal working hours, to examine copies of the relevant portions of the records of the other Party to the extent reasonably necessary to verify the accuracy of any invoice, charge or calculation made pursuant to this Contract. If any such examination reveals any inaccuracy in any invoice or calculation, the necessary adjustments in such invoice or calculation, and the payment of any adjustment thereto, shall be paid, with interest at the Interest Rate calculated from the date the overpayment or underpayment was made until paid, by the responsible Party pursuant to the terms of the PPA, the Wrap Contract or the applicable contract between CAPP and Designated Agents.

8.6 ERCOT Barred Issue. It is recognized by the Parties that ERCOT has some established time periods for disputing certain matters and the Parties expressly desire to be bound by such periods in their performance under this Contract. Therefore, notwithstanding any provisions in Article 7 of this Contract to the contrary, in the event CAPP is barred from disputing and correcting or adjusting with ERCOT any matter of any nature whatsoever affecting any matter covered by this Contract (an “**ERCOT Barred Issue**”), then Member shall be barred for all purposes from disputing any portion of any statement, invoice, notice or other matter hereunder to the extent that CAPP is unable to receive adjustment from or dispute such matter with ERCOT because such statement, invoice, notice or other matter is an ERCOT Barred Issue, even if Member’s notice is given within the twenty-three (23) months’ period set forth in this Article 8.

ARTICLE 9 DESIGNATION OF MEMBER'S DELIVERY POINTS

9.1 Designation of Member's Delivery Points. Member has designated its initial Member's Delivery Points by identifying the ESI-IDs and providing that information to CAPP’s Designated Agent(s). Such Member's Delivery Points are all points of receipt for electric service that are subject to retail choice. Member shall have a continuing obligation to provide CAPP and Designated Agent(s) with an updated listing of ESI-IDs by location and profile type.

ARTICLE 10 SECURITY

10.1 Security from Facilities Owners. The Facility Owners and Guarantor have agreed under Article 9 of the PPA to provide CAPP a first lien on certain collateral on a pari passu basis with other creditors. Member acknowledges that it has no direct right to enforce the lien, nor does it have any individual interest in the Facilities in the event of foreclosure of the first lien, nor may it exercise remedies available to CAPP under the PPA. To the extent that CAPP shall determine that it is in CAPP's interest to (i) agree to renewals, modifications, amendments, and refinancing of the first lien indebtedness described in the PPA, (ii) exercise or fail to exercise one or more remedies available to it under the PPA, or (iii) terminate or modify the PPA, Member irrevocably appoints the Board of Directors of CAPP as its agent and attorney in fact to enter into agreements

appropriate to the situation, including, but not limited to, agreements to substitute collateral, and agreements to release or partially release liens. The power herein granted to CAPP and its Board of Directors by Member is a power coupled with an interest that may not be revoked while all or any portion of the Bonds is unpaid.

10.2 Collateral Assignment of the Contract to Trustee for Bonds. This Contract and the Participant Contracts shall be collaterally assigned to the Trustee under the Bonds as security for the repayment of the Bonds to the extent of the Capacity Payment payable pursuant to Article 7 of this Contract and each of Participant Contracts.

ARTICLE 11 DEFAULT

11.1 Defaults by Facility Owners; Defaults by Participating Members. In the event of default by Facility Owners under the PPA, or in the event of a default by Member or by a Participating Member under a Participant Contract, the Parties agree and stipulate that decisions as to the exercise or non-exercise of remedies upon such default shall be solely vested in CAPP, as its Board of Directors may determine from time to time. Member acknowledges that CAPP's rights to elect remedies may be subject and subordinate to rights granted to or reserved by the holders and owners of the Bonds or the Trustee thereof.

11.2 Default by CAPP. Except as otherwise excused under this Contract, the occurrence of any of the following shall constitute an event of default by CAPP:

- (a) Failure of CAPP to pay the Capacity Prepayment as required under the PPA;
- (b) Failure by CAPP to timely perform its covenants under the Bonds, including payments required by it, unless such failure is caused by the failure of Member under this Contract or of one or more Participating Members under the Participant Contracts to pay CAPP sums required under Article 6; or
- (c) CAPP breaches any material contractual obligation under this Contract and such breach continues for a period of thirty (30) Days after the date on which written notice thereof is received from Member by CAPP.

11.3 Default by Member. Except as otherwise excused under this Contract, the occurrence of any of the following shall constitute an event of default by Member:

- (a) Member fails to accept delivery of the Products, or any portion thereof from CAPP. In the event of such failure, CAPP may, in addition to other remedies available to it under this Contract, provide the unaccepted Products to another Participating Member or, if no Participating Member elects to accept such

Products, to a third party at such price as CAPP may negotiate in the marketplace. If the price obtained in the marketplace is less than the price Member would have been required to pay for such Products, Member shall pay CAPP and CAPP may recover from Member (i) the positive difference, if any, obtained by subtracting what was received from the Participating Member or third party from what would have been received from Member had Member accepted the full delivery of Products required of it, and (ii) all costs of collection incurred by CAPP, including reasonable attorney's fees;

(b) Except for disputed charges arising under Section 8.4, Member fails to pay amounts due to CAPP as and when required under this Contract, which failure continues for a period of three (3) Business Days after the date on which written notice of a prospective Default is received by Member from CAPP;

(c) Failure by Member to levy the rate and amount of ad valorem taxes out of the maintenance tax of Member, and failure by Member to establish and maintain a sinking fund for the Monthly Capacity Payments and CAPP fees as required under Section 7.3, above;

(d) Failure by Member to pay to CAPP any sum of money required to be paid by Member under this Contract;

(e) Member breaches any material contractual obligation under this Contract and such breach continues for a period of twenty-eight (28) Days after the date on which written notice thereof is received by the breaching Party;

(f) Member becomes Bankrupt.

11.4 Remedies of CAPP in the event of default by Member. Unless otherwise limited by the terms of this Contract, in the event that Member shall default in the performance of its obligations under this Contract, CAPP may:

(a) Suspend delivery of Products to Member, and provide such Products to one or more Participating Members or third parties until such default is cured;

(b) Then and in every case, CAPP or an authorized representative thereof may proceed against the Member, or any official, officer or employee of the Member in their official capacity, for the purpose of protecting and enforcing the rights of CAPP under this Contract, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of CAPP hereunder or any combination of such remedies;

(c) Suspend performance of CAPP's obligations to Member under this Contract until the earlier of (i) the Day the Default has been cured in accordance with the terms of this Contract, except for Member's obligations to make Monthly Capacity payments under Article 7 hereof which shall not be affected by any such action;

(d) Exercise any other remedy available to CAPP at law or in equity.

In addition to all of the rights and remedies provided to CAPP by the laws of the State of Texas, and in addition to the remedies set forth above, the Member covenants and agrees that in the event of its default under this Contract, including failure to pay Monthly Capacity Payments and payments under Section 7.5 when due or Energy Payments when due after the Member has Appropriated for such payments, or, in the event it fails to make the payments required to be made into the Interest and Sinking Fund or defaults in the observance or performance of any other of the contracts, covenants, conditions or obligations set forth in this Contract, the following remedies shall also be available:

(e) CAPP, the trustee if CAPP has assigned all or part of this Contract to a trustee for the benefit of bond owners, shall be entitled to a writ of mandamus issued by a court of competent jurisdiction compelling and requiring Member and the officials thereof to observe and perform all agreements, covenants, obligations and conditions prescribed in this Contract;

(f) Any delay or omission to exercise any right or power accruing upon any default shall not impair any such right or power nor be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient; and

(g) Any other remedies available to CAPP at law or in equity.

11.5 Remedies of Member in the Event of Default by CAPP. Unless otherwise limited by the terms of this Contract, in the event that CAPP shall default in the performance of its obligations under this Contract, Member may:

(a) Then and in every case, Member may proceed against CAPP, or any official, officer or employee of CAPP in their official capacity, Sue for the purpose of protecting and enforcing the rights of Member under this Contract, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of Member hereunder or any combination of such remedies;

(b) Terminate this Contract, except for Member's obligations to make Monthly Capacity Payments under Article 7 hereof which shall survive any termination of this Contract;

(c) Exercise any other remedies available to Member at law or in equity.

11.6 No Waiver in Event of Default. Pursuit by either Party of any remedy for default pursuant to Article 11 of this Contract shall not constitute a forfeiture or waiver of any amount due by the defaulting Party or of any damages occurring by reason of the violation of any terms, provisions, or conditions of this Contract, provided however, that in no event shall CAPP be required to return to Member any sums paid by Member to CAPP for Capacity Prepayment. No waiver of any default or breach of this Contract shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, or conditions of this Contract. Forbearance to enforce one or more of the remedies available upon the occurrence of an event of default shall not constitute a waiver of that or any subsequent default or breach.

ARTICLE 12 INDEMNIFICATION; LIMITATION OF LIABILITY

12.1 Member's Indemnification of CAPP. To the extent permitted by the Constitution and laws of the State of Texas, and with full reservation of all defenses and immunities available under the Law, Member agrees to and shall indemnify, defend, and hold harmless CAPP and all of CAPP's officers, directors, shareholders, representatives, and employees, from and against all Indemnified Claims, including Indemnified Claims for personal injury, death, or damages to property, occurring after the Facility Owners' Delivery Points, arising out of or related to the Products. Notwithstanding the foregoing, CAPP agrees and understands that Member cannot indemnify CAPP, Facility Owners, or any individual associated with either of them from and against their own gross negligence and willful misconduct. To the extent that CAPP has agreed to indemnify Facility Owners pursuant to Article 13 of the PPA, then Member agrees to and shall indemnify, defend, and hold harmless CAPP and all of CAPP's officers, directors, shareholders, representatives, and employees, from and against all Indemnified Claims that CAPP has made to Facility Owners, but only to the extent permitted by the Constitution and laws of the State of Texas, and with full reservation of all defenses and immunities available under the Law.

12.2 Claims arising on Facility Owners side of the Facility Owners' Delivery Point. To the extent that claims for personal injury, death, or damages to property: (a) occur at and/or before the Facility Owners' Delivery Point, (b) arise out of or are related to the Product and Products, and (c) are covered as an Indemnified Claim by Facility Owners for the benefit of CAPP, Member and Participating Members, and each of their respective officers, officials, directors, and employees, then CAPP, on behalf of itself, Member, and Participating members, agrees to enforce the indemnity and

duty of defense that Facility Owners have granted to CAPP and Member under Article 12 of the PPA.

12.3 Indemnified Claims. “*Indemnified Claims*”, as used in Sections 12.1 and 12.2, above, means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Contract.

12.4 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH IN THIS AGREEMENT, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGE IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED EXCEPT AS SET FORTH IN ARTICLE 11 OF THIS AGREEMENT. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 13

REPRESENTATIONS

13.1 Mutual representations and warranties. Each Party represents and warrants to the other Party that:

(a) Such Party has the power and authority to execute, deliver and perform its obligations under this Contract. Such Party has authorized the execution and delivery of this Contract by the person(s) executing this Contract below.

(b) No provision contained in Member's charter or enabling legislation, as the case may be, if any, prohibits Member from entering into this Contract and performing the obligations required of Member under this Contract.

(c) This Contract constitutes a legal, valid and binding obligation of such Party, except as the enforceability of this Contract may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditor's rights generally and by general principles of equity which permit the exercise of judicial discretion.

(d) Neither the execution or delivery of this Contract results in any breach of or constitutes any default under any material agreement to which such Party is bound or causes such Party to be in violation of any Law, regulation, administrative or judicial order or process or decision to which such Party is a party or by which it or its properties are bound or affected.

(e) It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt.

(f) It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.

(g) All governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to this Contract or other document relating hereto or thereto to which it is a party have been obtained or submitted and are in full force and effect and all conditions of any such authorizations, approvals, consents, notices and filings have been complied with.

(h) No Default with respect to it, or event which with notice and/or lapse of time would constitute such a Default, has occurred and is continuing and

no such event or circumstance would occur as a result of its entering into or performing its obligations under this Contract or other document relating hereto or thereto to which it is a party.

There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Contract, or other document relating hereto or thereto to which it is a party or its ability to perform its obligations under the same.

ARTICLE 14

NOTICES

14.1 Notices. All notices and other communications required or permitted by this Contract or by Law to be served upon or given to a Party by the other Party shall be deemed duly served and given when received after being delivered by hand, or courier service, or sent by confirmed facsimile or certified mail, return receipt requested, postage prepaid, to the following address.

To Member:

City of Frisco
6101 Frisco Square Blvd., 5th Floor
Frisco, TX 75034
Attention: Assistant City Manager
Telephone: 972-292-5110
Facsimile: 972-292-5122

To CAPP:

Attention:
Telephone:
Facsimile:

Notices shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the Day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight

United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of it in accordance herewith.

ARTICLE 15 CONFIDENTIALITY

15.1 Confidential Information. Parties to this Contract acknowledge that they are obligated to protect the confidentiality of certain information provided by Luminant to CAPP in the course of negotiating the PPA pursuant to Article 17 of the PPA. Member agrees to be bound by the provisions of Article 17 of the PPA regarding any information that counsel to CAPP indicates in writing should be kept confidential and to promptly advise counsel to CAPP of any request for Public Information pursuant to Chapter 552 of the Texas Government Code for public revelation of confidential information provided to Member in its consideration of this Contract and related documents.

ARTICLE 16 ASSIGNMENT

16.1 Assignment. Except as provided otherwise in this Contract, neither Party shall assign this Contract or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, that the assignee is at the time of assignment a Member of CAPP. In no event shall the assigning Party be relieved from liability under this Contract upon assignment.

ARTICLE 17 CONTINUING DISCLOSURE

17.1 Continuing Disclosure Undertaking of Members. At such time that Member's aggregated unpaid Monthly Capacity Payments equals at least ten percent (10%) of the outstanding principal amount of the Bonds, Member agrees to provide annually to each Nationally Recognized Municipal Securities Information Depositories ("NRMSIR") and any State Information Depositories ("SID") financial information and operating data with respect to the Member of the general type hereinafter described. Subject to the foregoing sentence Member agrees to provide, within 195 days after the end of each Fiscal Year thereof ending in or after 2009, financial information and operating data with respect the Member. Any financial statements so to be provided shall be prepared in accordance with the accounting principles as Member may be required to employ from time to time pursuant to state law or regulation.

17.2 Financial Statements. If Member is required to file financial information pursuant to Section 17.1 and Member commissions an audit of such statements and the audit is completed within the period during which they must be provided, the financial statements to be provided shall be audited. If the audit of such financial statements is not complete within such period, then Participating Member shall provide unaudited financial statements and thereafter audited financial statements for the applicable fiscal year to

CAPP, each NRMSIR and any SID, when and if the audit report on such statements become available.

17.3 Change of Fiscal Year. If Member is required to file financial information pursuant to Section 17.1 and Member changes its Fiscal Year, it shall be the duty of such Member to notify each NRMSIR and any SID of the change (and of the date of the new Fiscal Year end) prior to the next date by which such Member otherwise would be required to provide financial information and operating data pursuant to this Article. The financial information and operating data to be provided pursuant to this Article may be set forth in full in one or more documents or may be provided pursuant to this Article may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document, if it is available from the Municipal Securities Rulemaking Board (“MSRB”) that theretofore has been provided to each NRMSIR and any SID or filed with the SEC.

17.4 Failure to Provide Continuing Disclosure. Member shall notify CAPP, any SID and either each NRMSIR or the MSRB, in a timely manner, of any failure of such Member to provide financial information or operating data in accordance with this Article by the time required thereby and hereby. No default by Member in observing or performing its obligations as described in this Article shall constitute a breach of or default under this Contract for purposes of any other provision of this Contract. Nothing in this Article is intended or shall act to disclaim, waive, or otherwise limit the duties of any Member under federal and state securities laws. If Member fails to provide such continuing disclosure required under this Article, CAPP shall use its best efforts to obtain relevant financial information and operating data with respect to any such Participating Member and to provide the same annually to each NRMSIR and any SID within 195 days after the end of each Fiscal Year of any such Member.

17.5 Amendment of Continuing Disclosure. Member’s undertaking under this Article may be amended by Member, with the consent of CAPP, from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of any Member, but only if (1) the undertaking, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of such Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule since such offering as well as such changed circumstances and (2) either (a) the holders of a majority in aggregate principal amount of the outstanding Bonds consent to such amendment or (b) a person that is unaffiliated with Member (such as nationally recognized bond counsel) determined that such amendment will not materially impair the interest of the holders and beneficial owners of the Bonds. If Member amends its undertaking herein, it shall include with any amended financial information or operating data next provided in accordance with this Article an explanation, in narrative form, of the reason for the amendment and of the impact of any change in the type of financial information or operating data so provided.

Member shall be obligated to observe and perform the covenants specified in this Article for so long as, but only for so long as, Member remains an "obligated person" with respect to the Bonds within the meaning of the Rule. The provisions of this Article are for the sole benefit of the holders and beneficial owners of the Bonds, and nothing in this Article, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person.

ARTICLE 18 TAX-EXEMPT BONDS

18.1 Tax-Exempt Bonds. The Parties understand and agree that CAPP will use commercially reasonable efforts to provide for, but will not be liable for a failure to produce, the lowest overall debt service cost for the Bonds. In connection therewith, the parties intend that CAPP may, with the approval of the Member, issue refunding bonds to refund the Bonds, if possible, the interest on which is excludable from the gross income of the owners thereof for federal income tax purposes. The Parties acknowledge that, under current federal tax laws, such tax-exempt financing of the Capacity Prepayment is not permitted. The Parties further acknowledge their understanding that the federal income tax laws impose certain restrictions on the use and investment of proceeds of tax-exempt bonds and on the use of the property financed therewith and the output produced therefrom. Accordingly, the Parties agree and covenant that if any refunding bonds are offered to investors with the understanding that the interest thereon will be exempt from federal income taxation, then the Parties, their assigns and agents, will take such action to assure, and refrain from such action which will adversely affect, the treatment of such refunding bonds as obligations described in Section 103 of the Internal Revenue Code of 1986. Should either Party fail to comply with such covenant, the effect of which being that such refunding bonds no longer qualify as obligations described in the Internal Revenue Code of 1986, such defaulting party shall be liable for all costs resulting from the loss of the tax-exempt status of such bonds. The Parties hereby agree and covenant to comply with all of the representations and covenants relating to such exemption which are set out in any relevant trust indenture or bond resolution. The Parties further agree and covenant that in the event any refunding bonds issued are to be tax-exempt, they will modify such agreements, make such filings, restrict the yield on investments, and take such other action necessary to fulfill the applicable provisions of the Internal Revenue Code of 1986. For these purposes, the Parties may rely on the respective opinion of any firm of bond attorneys selected by CAPP.

18.2 Agreement to Pay Beneficiary. In the event that tax-exempt refunding bonds are issued with the consent of the Members as provided in the immediately preceding paragraph above, Member hereby covenants and agrees to pay its proportionate share of any deficiency to CAPP for deposit into the appropriate rebate fund at the times and as described in the indenture of trust related to the Bonds to comply with the provisions of Section 148(f)(2) of the Internal Revenue Code of 1986.

18.3 Financing. Member agrees to cooperate with CAPP in connection with the issuance of the Bonds. Without limiting the foregoing, CAPP and Member acknowledge that this Contract may be an integral part of the documentation securing the Bonds. At CAPP's request, Member shall agree to amend this Contract to include any provision which may reasonably be requested by the issuer of the Bonds, and to include any provision that may be required to correspond to an amendment of the PPA; provided, however, that no such amendment shall increase the burdens or obligations of Member hereunder with respect to the price and purchase obligations set forth herein. Upon the request of CAPP, Member agrees to negotiate in good faith and shall execute additional documents, opinions and instruments reasonably requested by the proposed issuer of the Bonds including (i) a consent and agreement that provides an additional reasonable period of time to remedy any Default, and (ii) a legal opinion of counsel for Member affirming the enforceability of this Contract against Member and other matters reasonably requested, subject to customary exceptions and qualifications.

ARTICLE 19 MISCELLANEOUS

19.1 Applicable Law. This Contract is governed by and shall be construed under the Laws of the State of Texas excluding any conflict of laws rules. The Parties submit to the exclusive jurisdiction of the state and federal courts in Dallas County, Texas in connection with any litigation arising hereunder.

19.2 Counterparts. This Contract may be executed in more than one counterpart, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document.

19.3 Waiver. No waiver of any breach of the terms of this Contract shall be effective unless such waiver is in writing and signed by the Party against whom such waiver is claimed. No waiver of any breach shall be deemed to be a waiver of any subsequent breach.

19.4 Modification. The provisions of this Contract, including any exhibits, may only be modified by written agreement duly executed by each Party.

19.5 Severability If any provision of this Contract shall be determined to be unenforceable, void or otherwise contrary to Law, such condition shall in no manner operate to render any other provision of this Contract unenforceable, void or contrary to Law, and this Contract shall continue in force in accordance with the remaining terms and provisions hereof, unless such condition invalidates the purpose or intent of this Contract. In the event that any of the provisions, or portions or applications thereof, of this Contract are held unenforceable or invalid by any court of competent jurisdiction, Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this Contract with a view toward effecting the purposes of this Contract by replacing the provision that is unenforceable, void, or contrary to Law

with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be unenforceable, void, or contrary to Law.

19.6 Requirements. Each Party shall timely comply with all then-current PUCT and ERCOT requirements (including, without limitation, the ERCOT Guides) that are applicable to it and shall reasonably cooperate upon reasonable notice with the other Party to the extent necessary for the other Party to timely comply with then-current PUCT and ERCOT requirements (including, without limitation, the ERCOT Guides) that are applicable to it.

19.7 Entirety. It is the intention of the Parties that this Contract shall contain all terms, conditions, and protections in any way related to, or arising out of, the sale and purchase of the Products as contemplated herein, and supersedes all prior agreements regarding the subject matter hereof, whether written or oral.

19.8 Captions, Titles and Headings. Captions, titles and headings used in this Contract are for ease of reference only and do not constitute a part of this Contract.

19.9 Forward Contract. The Parties acknowledge and agree that this Contract constitutes a “forward contract” within the meaning of the United States Bankruptcy Code.

19.10 Further Assurances. Each Party shall, from time to time, upon the written request of any other Party, execute and deliver such further instruments and documents as shall be necessary to perform its obligations hereunder.

19.11 Survival. The confidentiality and audit provisions, indemnities, releases from liability, and limitations on liability or damages expressed in this Contract shall, unless otherwise provided herein, survive without limitation the termination, cancellation or expiration of this Contract, and shall apply whether in contract, equity, or otherwise. Notwithstanding the foregoing, the statute of limitations for bringing any action with respect to this Contract or either Party’s performance hereunder is not extended by the provisions of this Section 19.11.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed in their respective names by their duly authorized officers.

MEMBER:

CITY OF FRISCO

By: _____

Printed name: George Purefoy

Its: _____

Date

ATTEST:

Ron K. Patterson
Interim City Secretary

CAPP:

CITIES AGGREGATION POWER
PROJECT

Date

By: _____

Printed name: _____

Its: _____

ATTEST:

SCHEDULE OF EXHIBITS

- "A" List of Participating Members
- "B" PPA
- "C" Payment Schedule
- "D" Total Monthly Contract Payment Schedule.
- "E" CAPP Capacity Payment Schedule

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